

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5326 of 1985

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JAYANTILAL P SHAH

Versus

STATE OF GUJARAT .

Appearance:

MR YS MANKAD for Petitioners

None appears for the respondents Nos.1 & 2.

MS VASUBEN P SHAH for Respondent No. 3, 4

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 08/08/96

ORAL JUDGEMENT

The petitioner was appointed as Senior Clerk in the respondent No.4 Institution on 30th September, 1956, and his salary was fixed in the pay-scale of Rs.75-180 which was admissible for a senior clerk. His pay was thereafter revised in the scale of Rs.100-260 with effect from 1-1-1971 and Rs.153-465 with effect from 1-4-73.

However, on implementation of the revision of Pay Rules 1967 the petitioner opted for the Government scale and his pay was re-fixed with effect from 1-1-68 in the scale of Rs.260-340. It was further revised in the scale of Rs.330-560 with effect from 1-1-73. The junior Assistant Examiner upon inspection raised an objection to the petitioner's appointment as Senior Clerk and determined his pay on the post of junior clerk on 16th August 1978. Petitioner's pay was reduced with effect from 1st September, 1978 in the scale of Rs.260-400 which was applicable to the post of junior clerk. Petitioner raised an objection against such reduction in pay and accordingly said order was not implemented till the year 1982. However, once again in the year 1982, the petitioner's pay was reduced in the scale admissible to a junior clerk. Petitioner once again raised an objection and submitted that the action of the junior assistant examiner was illegal. Respondent No.4 Institution was entitled to the post of senior clerk and accordingly the petitioner was appointed as Senior clerk since 1956. Petitioner was being paid salary as senior clerk since 1956 till the date of objection. Thus, the petitioner's demotion to the post of junior clerk and the reduction in pay was not justified. Petitioner's objection was also supported by the Secretary of the respondent No.3 Society. Petitioner has made representation to the District Education Officer in this behalf. However, same has not been considered and decided. In the meanwhile, petitioner retired from service in the month of September, 1985. Petitioner feeling aggrieved by the action of the respondents in demoting the petitioner and in reducing his pay, has filed this petition before this court under Article 226 of the Constitution of India.

Though served, the Government has not appeared nor has it filed counter affidavit justifying its action. It should be noted that the petitioner was appointed as senior clerk in the year 1956 and he was being paid salary as senior clerk since 1956. His pay was revised from time to time, in accordance with the revision of pay, as senior clerk. In the circumstances, the action of the respondents in demoting the petitioner to the post of junior clerk and in reducing his pay that too, without hearing the petitioner or without affording an opportunity either to the petitioner or the respondent No.3 requires to be quashed and set aside.

Petition is, therefore, required to be allowed. The entries made in the service book of the petitioner at Annexures D & E to the petition are quashed and set aside. Respondents are directed to re-fix the pay of the

petitioner as a senior clerk and pay the arrears of salary in view of such re-fixation. Rule is made absolute accordingly. There shall be no order as to costs.
